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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,766	02/04/2004	Joaquin Romay	81687	5700

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FITCH EVEN TABIN AND FLANNERY  
120 SOUTH LA SALLE STREET  
SUITE 1600  
CHICAGO, IL 60603-3406

EXAMINER

HOEY, ALISSA L

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/772,766	<b>Applicant(s)</b> ROMAY, JOAQUIN	
	<b>Examiner</b> Alissa L. Hoey	<b>Art Unit</b> 3765	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 January 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11, 13-38 and 46-49 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 and 46-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This is in response to remarks and terminal disclaimer of 01/27/05. The terminal disclaimer has been approved. Claims 12 and 39-45 have been cancelled and claims 1-11, 13-38 and 46-49 are pending in the application with claims 1-11 and 46-49 withdrawn. Newly found art has been used to reject claims 13-38.

### ***Claim Objections***

2. Claim 21 is objected to because of the following informalities: there is no support for "the arch support section" in independent claim 13. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 13, 22, 26 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Nordblad (US 1,314,356).

In regard to claim 13, Nordblad teaches a sock (1) comprising a heel section adapted to receive a heel of a foot of a wearer therein (figure 1, lines 55-66). An arch section and a plurality of separated, closed to sections (3, 2) to receive the toes of the foot of the wearer. The toe sections joined by nested, overlapping material portions (figures 1-3, lines 45-77).

In regard to claim 22, Nordblad teaches a sock (1) wherein each toe section includes a top portion above the toe and a bottom portion below the toe that are seamless (figure 1-3, lines 55-66).

In regard to claim 26, Nordblad teaches a method of making a sock by forming a heel section adapted to receive a heel of a foot of a wearer therein. Forming an arch section and forming a plurality of separated, closed toe sections to receive toes of the foot of the wearer. The toe sections joined by nested, overlapping material portions (figures 1-3, lines 37-77).

In regard to claim 35, Nordblad teaches each toe section (2, 3) including a top portion above the toe and a bottom portion below the toe that are seamless (lines 55-66).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 19, 20 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nordblad.

In regard to claim 19 and 20, Nordblad fails to teach the heel section having sides with opposite angled stitched seams or a generally bilaterally symmetrical trapezoidal shape.

At the time the invention was made, it would have been obvious to have provided the heel section having sides with opposite angled stitched seams or a generally bilaterally symmetrical trapezoidal shape because Applicant has not disclosed that the heel section having sides with opposite angled stitched seams or a generally bilaterally symmetrical trapezoidal shape provides an advantage is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the heel section having sides with opposite angled stitched seams or a generally bilaterally symmetrical trapezoidal shape or having just a simple knit construction because as long as the sock has a heel section the shape of the heel section is not critical and as supported in Applicant's specification on page 8-9, lines 19-29 and 1-3. Therefore, it would have been an obvious matter of design choice to modify Nordblad to obtain the invention as specified in claims 19 and 20.

It would have been obvious to have provided the garment of Nordblad in the same methods as provided in claims 32 and 33, since the garment of Nordblad has all the structure as required and critical in claims 32 and 33.

7. Claims 14, 15, 17, 18, 27, 28, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nordblad in view of Gallagher (US 5,555,565).

Nordblad provides a garment as described above in claim 13. However, Nordblad fails to teach the sock being made out of an air-permeable, hydrophobic fiber material, the interior portion and the exterior portion including a greater or equal amount

of hydrophobic fiber material than the exterior portion and the hydrophobic fiber material comprises hollow-core tetra-channels.

In regard to claim 14, Gallagher teaches the sock being made out of at least partially of an air-permeable, hydrophobic fiber material (column 5, lines 37-41).

In regard to claim 15, Gallagher teaches the sock including an interior and exterior portion including a greater or equal amount of hydrophobic fiber material than the exterior portion (column 3, lines 3-44).

In regard to claim 17, Gallagher teaches the hydrophobic fiber material comprising channels (column 5, lines 37-41).

In regard to claim 18, Gallagher teaches the hydrophobic fiber material having at least one of a tetra-channeled configuration (column 5, lines 37-41).

However, Gallagher fails to teach the tetra-channels having a hollow-core configuration.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the tetra-channels having a hollow-core configuration because Applicant has not disclosed that the tetra-channels having a hollow-core configuration provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the tetra-channels having a hollow-core configuration or not because as long as the tetra-channels are present to provide for air permeability and wicking to the sock the hollow-core configuration is not critical and as supported in Applicant's specification on page 5,

lines 18-25). Therefore, it would have been an obvious matter of design choice to modify Gallagher to obtain the invention as specified in claim 18.

It would have been obvious to have provided the sock of Nordblad with hydrophobic fiber material including interior and exterior portions of Gallagher, since the sock of Nordblad provided with a hydrophobic fiber material would provide a sock article that wicks perspiration away from the user's toe and creates less bulk than a hydrophilic fiber material.

It would have been obvious to have provided the garment of Nordblad and Gallagher in the same methods as provided in claims 27, 28, 30 and 31, since the garment of Nordblad and Gallagher has all the structure as required and critical in claims 27, 28, 30 and 31.

8. Claims 14, 16, 21, 23, 24, 27, 29, 34, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nordblad in view of Dahlgren (US 4,898,007).

Nordblad teaches a sock as described above in claim 13. However, Nordblad fails to teach the sock made of at least partially an air-permeable, hydrophobic fiber material, and the sock including one or more sections with multiple adjacent high density and low density hydrophobic fiber material areas. Further, Nordblad fails to teach the arch support section including multiple adjacent high density and low density hydrophobic fiber material areas. The sock shaft section including an open end through which the foot of the wearer is inserted when the sock is put on and adapted to encircle a lower part of a leg of a wearer. Finally, Nordblad fails to teach the shaft support

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section including multiple adjacent high density and low density hydrophobic fiber material areas.

In regard to claim 14, Dahlgren teaches the sock being made at least partially of an air-permeable, hydrophobic fiber material (column 1, lines 24-61).

In regard to claim 16, Dahlgren teaches the sock including one or more sections with multiple adjacent high density and low density hydrophobic fiber material areas (figure 5: column 5, lines 10-13).

In regard to claim 21, Dahlgren teaches an arch support section including multiple adjacent high density and low density hydrophobic fiber material areas (figure 5).

In regard to claim 23, Dahlgren teaches a sock shaft section including an open end though which the foot of the wearer is inserted when the sock is put on a adapted to encircle a lower part of the leg of a wearer (figures 1-3 and 5).

In regard to claim 24, Dahlgren teaches the shaft support section including multiple adjacent thigh density and low density hydrophobic fiber material areas (figure 5).

It would have been obvious to have provided the sock of Nordblad with the multiple adjacent hydrophobic fiber material areas of Dahlgren, since the sock of Nordblad provided with multiple adjacent hydrophobic fiber material areas to provide for good wicking properties to the user's foot during use.

It would have been obvious to have provided the garment of Nordblad and Dahlgren in the same methods as provided in claims 27, 29, 34, 36 and 37, since the

garment of Nordblad and Dahlgren has all the structure as required and critical in claims 27, 29, 34, 36 and 37.

9. Claims 25 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nordblad in view of Dahlgren as applied to claim 23 above, and further in view of Allaire et al. (US 4,958,507).

Nordblad and Dahlgren fail to teach the sock including a dual-welt band.

In regard to claim 25, Allaire teaches a sock including a dual-welt band (column 6, lines 48-52).

It would have been obvious to have provided the sock of Nordblad and Dahlgren with the dual-welt band of Allaire, since the sock of Nordblad and Dahlgren provided with a dual-welt band allows the sock garment to stay securely in place on the wearer's leg while worn, without sliding down.

It would have been obvious to have provided the sock of Nordblad and Dahlgren in view of Allaire in the same method as provided in claim 38.

### ***Response to Arguments***

10. Applicant's arguments with respect to claims 13-38 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Komatsu, Town, Sullivan, Willard, Rinehart, Craner, Brogden,

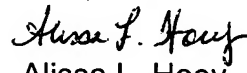
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Safford, Kobayashi, Blustin and Smith are all cited to show closely related garment articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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